

§ 300.605

(3) Refers the case to the Office of the Inspector General at the Department of Education.

(4) Refers the matter for appropriate enforcement action, which may include referral to the Department of Justice.

(d) *Report to Congress.* The Secretary reports to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate within 30 days of taking enforcement action pursuant to paragraph (a), (b), or (c) of this section, on the specific action taken and the reasons why enforcement action was taken.

(Authority: 20 U.S.C. 1416(e)(1)–(e)(3), (e)(5))

§ 300.605 Withholding funds.

(a) *Opportunity for hearing.* Prior to withholding any funds under Part B of the Act, the Secretary provides reasonable notice and an opportunity for a hearing to the SEA involved, pursuant to the procedures in §§ 300.180 through 300.183.

(b) *Suspension.* Pending the outcome of any hearing to withhold payments under paragraph (a) of this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate funds under Part B of the Act, or both, after the recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate funds under Part B of the Act should not be suspended.

(c) *Nature of withholding.* (1) If the Secretary determines that it is appropriate to withhold further payments under § 300.604(b)(2) or (c)(2), the Secretary may determine—

(i) That the withholding will be limited to programs or projects, or portions of programs or projects, that affected the Secretary's determination under § 300.603(b)(1); or

(ii) That the SEA must not make further payments under Part B of the Act to specified State agencies or LEAs that caused or were involved in the Secretary's determination under § 300.603(b)(1).

(2) Until the Secretary is satisfied that the condition that caused the initial withholding has been substantially rectified—

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(i) Payments to the State under Part B of the Act must be withheld in whole or in part; and

(ii) Payments by the SEA under Part B of the Act must be limited to State agencies and LEAs whose actions did not cause or were not involved in the Secretary's determination under § 300.603(b)(1), as the case may be.

(Authority: 20 U.S.C. 1416(e)(4), (e)(6))

§ 300.606 Public attention.

Whenever a State receives notice that the Secretary is proposing to take or is taking an enforcement action pursuant to § 300.604, the State must, by means of a public notice, take such actions as may be necessary to notify the public within the State of the pendency of an action pursuant to § 300.604, including, at a minimum, by posting the notice on the SEA's Web site and distributing the notice to the media and through public agencies.

(Authority: 20 U.S.C. 1416(e)(7))

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§ 300.607 Divided State agency responsibility.

For purposes of this subpart, if responsibility for ensuring that the requirements of Part B of the Act are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons is assigned to a public agency other than the SEA pursuant to § 300.149(d), and if the Secretary finds that the failure to comply substantially with the provisions of Part B of the Act are related to a failure by the public agency, the Secretary takes appropriate corrective action to ensure compliance with Part B of the Act, except that—

(a) Any reduction or withholding of payments to the State under § 300.604 must be proportionate to the total funds allotted under section 611 of the Act to the State as the number of eligible children with disabilities in adult prisons under the supervision of the other public agency is proportionate to the number of eligible individuals with disabilities in the State under the supervision of the SEA; and

(b) Any withholding of funds under § 300.604 must be limited to the specific